

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4557 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SURYANKANT C SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR YN OZA for Petitioner

MR DP JOSHI for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:

CAV JUDGEMENT

The petitioner, a retired Assistant Controller, Civil Supplies Department, filed this petition and challenged the order of the respondent-State dated 21.7.1988 (Annexure-A) under which in exercise of powers conferred under Rule 161 of the Bombay Civil Services Rules, 1959, the petitioner was ordered to be prematurely retired from the government service with effect from the date of delivery of the said order.

The petitioner filed an application being Civil Application No. 7055 of 1997 for amending the Special Civil Application. The said Civil Application has been decided by this Court on 8.8.1997 and the petitioner has been permitted to amend this Special Civil Application. However, amendment in the Special Civil Application has not been carried out. Still, the facts which are sought to be pleaded by the amendment in the Special Civil Application are taken into consideration.

The learned counsel for the petitioner contended that the petitioner has unblemished and untarnished service record of 28 years, he was promoted in the month of May 1981 and in these facts it cannot be said to be a case of doubtful integrity or that the petitioner is a deadwood, who has to be chopped off in the public interest. The learned counsel for the petitioner has next contended that the provisions of Rule 161 of the Rules of 1969 have been resorted to in the case of the petitioner to punish him. Out of two criminal cases filed against the petitioner for the offences under the Prevention of Corruption Act, 1958, in the first case "A" Summary Report has been submitted which has been accepted by the court whereas in the second criminal case though chargesheet has been submitted in the Court, the same is still at the initial stage, i.e. even the charges were not framed. So, it is a case where for the earlier charges of corruption against the petitioner, which are subject matter of trial against him, he has been ordered to be prematurely retired from the government service by the respondent, which is legally impermissible. In support of his contentions, Mr. Y.N. Oza, learned counsel for the petitioner has placed reliance on three decisions of this Court detailed as under:

(1) Special Civil Application No. 2376/87 decided on 1.6.1988.

(2) Special Civil Application No. 28/90 decided on 12.10.90.

(3) Special Civil Application No. 3505/90 decided on 30.1.91.

On the other hand, Mr. D.P. Joshi, learned counsel for the respondent has contended that the case of the petitioner for premature retirement was considered by the Review Committee and it was considered to be in the public interest to order for his premature retirement. The proceedings of the Review Committee and the decision of the Government have been submitted for perusal of this

Court by the learned counsel for the respondent. I has been further contended by the learned counsel for the respondent that the petitioner has been involved in serious irregularities and for alleged irregularities and illegalities committed by him departmental inquiry has also been initiated against him. According to the learned counsel for the respondent, those irregularities and illegalities were also examined by the Criminal Investigation Department and the inquiry has been entrusted to the Special I.G.P. (CID-Crimes) and the petitioner was placed under suspension taking into consideration seriousness of charges levelled against him. He has further submitted that looking to the overall record of the petitioner, the Government was satisfied that it would not be in the public interest to continue the petitioner in service after his attaining the age of 50 years. The petitioner was holding the post of Assistant Controller and he was involved in the case of issuing bogus cement permits. According to him, after taking into consideration the overall service record of the petitioner the Government has decided to weed out him being an inefficient and corrupt officer and that Rule 161 of the Rules of 1959 empowers the Government to pass such an order and premature retirement is not a penalty. The learned counsel for the respondent urged that this Court in such matters have very limited powers of judicial review which are not analogous to the powers of the Appellate Authority and this is not a fit case which calls for any interference by this Court. Replying to three decisions on which reliance has been placed by the petitioner, Mr. D.P. Joshi, learned counsel for the respondent contended that those decisions were given in the given facts of those cases and, therefore, it cannot be taken that in the case where there are serious charges of corruption against an officer, he cannot be ordered to be retired prematurely and each case has to be decided on the basis of its own facts.

I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. First of all, I consider it to be appropriate to make reference to three decisions of this Court, on which reliance has been placed by the learned counsel for the petitioner. In the Special Civil Application No. 2376/87 decided on 1.6.1988 the facts of the case were that the petitioner was ordered to be retired prematurely and to justify this order the respondent-State has come out with a case that the petitioner had no good service record and he was having adverse remarks in the Confidential Records for the years 1975-76, 1980-81 and 1985-86 and even his integrity was found to be doubtful.

This Court has, in the said case, relying on the decision of the Honourable Supreme Court of India in the case of Brijmohansingh Chopra reported in AIR 1982 SC 948, held that the adverse remarks in the service record of the petitioner therein for the years 1975-76 and 1980-81 stood washed off as he has been given promotion on the post of Dy. Superintendent. of Police with effect from 5.7.1982. It has been held in the said case that the adverse remarks for the years 1975-76 and 1980-81 which had been taken into consideration by the Review Committee ought not to have been taken into consideration as they lost their significance after the petitioner was promoted to the higher post. So far as other entries in Confidential Records of the petitioner therein, are concerned, the Court had held that in the overall assessment for the year 1984-85 nothing adverse to the petitioner therein had been recorded. On the contrary, it was stated that he was an average type of officer with flair for law and order duties. Then comes the entry of the year 1985-86 and the Court has held that these remarks had not been communicated to the petitioner therein within reasonable time and only on that ground these remarks were held could not have been taken into consideration by the Review Committee. On merits the adverse remarks for the year 1985-86 have been considered and the Court has opined that these remarks could not have been the basis for forming an opinion for premature retirement of the petitioner in the said case. The Court has also observed that representation against the adverse remarks for the year 1985-86 was pending and as such, it could not have been taken into consideration by the Review Committee.

In the Special Civil Application No.28 of 1990 decided on 12.10.1990 the Court has held that the petitioner therein was not only allowed to cross Efficiency Bar, but he was also promoted to the post of Executive Engineer and, therefore, he could not have been taken to be a deadwood.

In the Special Civil Application No. 3505 of 1990 decided on 30.1.1991 the Court has held that the petitioner therein was promoted in the month of March 1984. So far as the adverse remarks for the years 1984-85 and 1985-86 are concerned, the Court held that the performance of the petitioner therein for the years 1984-85 was very weak, but looking to the remarks from 1.4.1985 to 12.10.1985 they appear to be 'ordinary' while confidential records from 1.11.1985 to 23.3.1986 it appears to be satisfactory. So, taking into consideration these records the Court has held that it

cannot be said that he is a 'deadwood' or 'worthless', who is required to be chopped off. In that case a criminal case was also pending against the petitioner and due to that he was placed under suspension and during the pendency of the said criminal case he was ordered to be retired prematurely. However, in the criminal case he was acquitted by the time the Special Civil Application came up for hearing before this Court. In those facts the order of premature retirement passed in the case of the petitioner therein was held to be invalid.

In the case in hand I have perused the proceedings of the Review Committee meeting of 9.2.1988 as well as the noting of the Secretary which had been made after discussion with the Chief Secretary. It is no more res integra that action of the Government to retire its officer prematurely cannot be said to be penal in nature. The underlying object of taking action of premature retirement against an officer is to chop off 'deadwood' or 'worthless' without punitive action against the officer in question as per the provisions of Art. 311 of the Constitution of India. Similarly, it is well settled principle of law that an order of premature retirement does not amount to dismissal or removal within the meaning of Art. 311 of the Constitution of India and the provisions of the said Article are not attracted in such cases. It is equally well settled principle of law that in appropriate case though the order of premature retirement is couched in awkward language without making any imputation against the officer concerned, the Court, if such order is challenged before it, can lift the veil to find out whether such order is passed for the misconduct of the officer concerned or it is bona fide and not with oblique motive. So, mere form of the order in such cases cannot deter the Court from delving into the basis of the order, if the order in question is challenged by the concerned officer on the ground that it is unlawful, arbitrary and unreasonable. The opinion for passing an order of premature retirement of an officer must be bona fide, genuine, reasonable and not arbitrary or unreasonable.

This Court in such matters does not sit as Appellate Authority over the decision of the Govt. The Review Committee has doubted the integrity of the petitioner and it has been opined that it is not advisable to continue the petitioner in service for further period. The Review Committee has further opined that looking to the seriousness of the charges levelled against him, there is a possibility of serious punishment of dismissal of the petitioner. The Review Committee has

next opined that in the circumstances if the petitioner retires at the age of 50 years then such proceedings cannot be continued further and serious punishment cannot be inflicted. It has further been opined that the step concerning to reduction of pension also cannot be taken. At that point of time the petitioner was under suspension and it has been taken by the Review Committee that as he is under suspension and not in actual service, there is no question of damage to public and the Government. So, the Review Committee was of the opinion that the petitioner should be continued in service so that he may be dealt with severely for the alleged serious misconduct. This note had been placed before the Secretary, who had raised a question as to whether the Government can wait till the CID inquiry is over. The matter was further discussed and it has been decided that he should be retired prematurely and thereafter the cases against him withdrawn though with a further note "Provided he does not go to Court in issue of premature retirement". However, rightly it has subsequently been opined that nobody can say with certainty that the petitioner would not go to the Court on the issue of his premature retirement. The matter has thereafter been discussed with the Chief Secretary and a decision has been taken that if the petitioner goes to the Court against the order of premature retirement then the cases against him should not be withdrawn.

Admittedly, against the petitioner two criminal cases for the offences as punishable under the provisions of the Prevention of Corruption Act have been filed. In one case the final report has been submitted by the Police and in the other case matter is under investigation. It is equally true that there are serious charges of corruption against the petitioner. The criminal liability of the petitioner is one thing and his continuation in service when his integrity is doubtful, is another thing. In between these two there is another aspect that for the alleged serious charges of corruption the petitioner could have been dealt with departmentally also and if the charges are proved the minimum penalty could and should have been, as held by the Honourable Supreme Court of India, in the case of Narayan Dattatraya Ramteerthakar v. State of Maharashtra and others, reported in 1997(1) SCC 299, would have been dismissal or removal. The order of premature retirement has not been challenged by the petitioner on the ground of mala fides. The petitioner has not alleged any mala fides against any of the officers i.e. the Members of the Review Committee as well as the Secretary concerned, or the Chief Secretary.

If the integrity of the officer is doubtful, then his retention in public service cannot be said to be in the public interest. There cannot be two opinion on this question. In such matters it is difficult to accept that the petitioner has been prematurely retired by way of penalty. On the basis of the material available on record the competent authority may form an opinion on the question whether the officer concerned should be retained in service or not. If the opinion is based on such material, it cannot be said that it is arbitrary or perverse opinion. The material which has come on the record can be the basis for forming the opinion that concerned officer should be retained in service or that he should be prematurely retired in the public interest. If there are serious charges of corruption against the officer concerned, then certainly he could have been ordered to be prematurely retired. If such an order is passed, it cannot be said that there is no material at all on which satisfaction could have been recorded. Premature retirement of the petitioner is ordered in the public interest. Much emphasis has been put by the learned counsel for the petitioner on the point that only on the basis of criminal case the petitioner could not have been retired prematurely and if it is so done, it would be a case of penalty where the provisions of Article 311 of the Constitution of India are attracted. I fail to see any justification in this contention.

The Honourable Supreme Court of India in large number of cases have held that there is no bar to proceed simultaneously against an officer of the government for his alleged misconduct, departmentally and by way of criminal proceedings. The standard of proof in these proceedings differ. In criminal proceedings the standard of proof is of proving guilt of the accused beyond reasonable doubt, but in disciplinary proceedings the standard of proof is that of preponderance of probabilities. Reference in this respect may have to the decisions of the Apex Court reported in the cases of Kusheshwar Dubey v. M/s. Bharat Coking Coal Ltd. and Ors. 1988(4) SCC 319 and Depot Manager, A.P. State Road Transport Corpn. v. Mohd. Yousuf Miya and others (1997)2 SCC 699=AIR 1997 SC 13. The Review Committee was of the opinion that looking to the seriousness of the charges of corruption against the petitioner, he should be severely dealt with and should not be permitted to go to get all these benefits on premature retirement. However, the Secretary concerned and the Chief Secretary of the State considered it to be a case where lesser evil has been done to the petitioner by ordering for his

premature retirement. On the basis of the material which has come on record such opinion could have been formed and this Court will not sit as Appellate Authority over that decision. The respondent in this case has acted very fairly and even at one point of time it has been thought of relieving the petitioner of all the cases filed against him. It cannot be said that in this case premature retirement is ordered by way of penalty. In this case I have called for the relevant record and perused the same and I am fully satisfied that it cannot be said to be a case of penalty to the petitioner. If we go by the contention of the learned counsel for the petitioner, then the Court will permit an officer, whose integrity is highly doubtful, to continue in employment either under suspension or in actual service which would cause harm, both to the public as well as to the Department. It is not unknown that corruption is prevailing at all levels in all the government offices. The figures of corruption charges in government offices are shocking and every day we are hearing that raids are conducted at the residences of the government officers, either by the C.B.I. or the Income Tax Department and undisclosed properties worth lacs of rupees are being detected.

On the basis of the material which has come on record of this case certainly an opinion can be formed on the question as to whether the petitioner should be retained in service or he should be ordered to be retired prematurely. The basic and foremost consideration is 'public interest' and in case on the basis of the material which has come on record it is opined that it is not in public interest to continue him, he can be ordered to be retired prematurely. More so, when there is no question of any complaint of mala fides by the petitioner against the officers who have taken such decision.

There is another aspect of the matter. If we go by the contention of the petitioner's counsel then premature retirement could have been ordered only when officer concerned has been found guilty of charges in the criminal court or if he is found guilty of charges in the departmental inquiry. So, for the purpose of exercising powers under Rule 161 of the B.C.S. Rules, as per the contention of the learned counsel for the petitioner these are the only two materials and no other material. It is not the underlying object of Rule 161 of the B.C.S. Rules. But, these Rules contemplate that the authority has to form bona fide and genuine opinion on the basis of the material available for premature retirement of the concerned officer in the public interest.



The decisions on which reliance has been placed by the learned counsel for the petitioner are of little help to the petitioner in this case. Those cases have been decided on the basis of their own facts. Each case has to be decided by the Court on the basis of its own facts. In a given case, if on the basis of the material available with the authorities, an opinion is formed that it is not in public interest, to retain the concerned government servant, whose integrity is doubtful, then this Court will not sit as appellate Court over that finding reached by the authorities. It is the satisfaction of the authority concerned and to certain extent it may be subjective satisfaction. In such matters this Court has very limited powers of judicial review. The Court has to consider whether there was some material on record to form such an opinion and if this Court is satisfied that there was such material on record for forming such opinion, then the Court will not go into other questions and more so, when there is no allegation of mala fides.

I consider it to be appropriate now to refer to certain decisions of the Honourable Supreme Court on the question of compulsory/premature retirement. In the case of K. Kandaswamy v. Union of India (1995(6) SCC 162) their Lordships of the Supreme Court have held that compulsory retirement does not amount to dismissal or removal with the meaning of Art. 311 of the Constitution of India nor does a punishment nor does it entail loss of retriial benefits nor is it stigmatic. In the said case their Lordships have further held that if the appropriate authority bona fide forms an opinion that in view of doubtful integrity, it would not be desirable in the public interest to retain the officer concerned in service, the correctness thereof cannot be challenged before the Courts though it may be open to the aggrieved employee to impugne it. But the same may be challenged on the ground that requisite opinion is based on no evidence or the decision is based on collateral ground or it is an arbitrary decision. While exercising the powers as vested under the Rules of compulsory retirement of an officer, the appropriate authority has to weigh several circumstances in arriving at the conclusion that an employee is required to be compulsorily retired in the public interest. The Government is given power to move its machinery for weeding out deadwood, inefficient, corrupt and people of doubtful integrity by compulsorily retiring them from service. When the appropriate authority forms bona fide opinion that compulsory retirement of the government employee is in the public

interest, the Court would not interfere with such order. Their Lordships have further held that higher the ladder the officer scales in the echelons of service, greater should be the transparency of integrity, honesty, character and dedication to duty. The appropriate Government or the authority would, therefore, need to consider the totality of the facts and circumstances appropriate in each case and would form the opinion whether compulsory retirement of a government employee would be in the public interest. The opinion must be based on the material on record; otherwise it would amount to arbitrary or colourable exercise of power.

Reference may also have to another decision of the Honourable Supreme Court in the case of State of U.P. v. Abhey Krishna Mesta (1995(1) SCC 336). In that case Their Lordships of the Supreme Court have held that order of compulsory retirement passed during the pendency of departmental inquiry may not necessarily be penal. It is true that its nature is to be decided on verification of relevant record or material on the basis of which order is passed.

In another decision of three Honourable Judges of the Supreme Court of India in the case of State of Orissa v. Ramchandra Das (AIR 1996 SC 2346) it is held that the Government is empowered and would be entitled to compulsorily retire a government servant in public interest with a view to improve efficiency of the administration or to weed out people who are of doubtful integrity or are corrupt, but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service. The government before taking a decision to retire a government employee compulsorily from service, has to consider the entire record of the government servant, including latest reports. Compulsory retirement is not a punishment and the employee compulsorily retired is entitled to all the pensionary benefits. The record of the pending inquiry on the conduct also would be material though minor penalty may be imposed for the act of misconduct, nevertheless it remains part of the record for overall consideration to retire a government servant compulsorily. The object always is public interest. While dealing with the question of judicial review of decision of the government to compulsorily retire government servants, their Lordships of the Supreme Court have observed that the material question is, whether entire record of the service was considered or not. It is not for the Court/Tribunal to see whether decision of the Government to compulsorily retire the government

servant is justified or not. It is for the Government to consider the same and take appropriate decision in that behalf. What would be relevant is, whether upon considering such record a prudent person would reach the decision. Such material may not be taken into consideration after promotion, to deny the government servant further promotion, if any. But, that material undoubtedly would be available to the government to consider the overall expediency or necessity to continue the government servant in service.

Reference may also have to another decision of the Honourable Supreme Court of India in the case of U.P.State Mineral Development Corpn. and Another v. K.C.P. Sinha (1996(5) SCC 111). In the said case Their Lordships have observed that the object underlying a provision enabling the appointing authority to compulsorily retire an employee before he attains the prescribed age of superannuation is to energize the administration and make it more efficient by chopping of deadwood and to ensure that a key post is held by a person of undoubted ability and integrity.

In the case of Sukhdeo v. Commissioner, Amravati Division (1996(5) 103) Their Lordships of the Supreme Court have held that the object of compulsory retirement is to see that the object of the compulsory retirement is to see that the inefficient and corrupt persons are removed but no sufficient evidence was available to dismiss or remove him from service after inquiry, they are weeded out from service with a view to secure efficiency in public service and to maintain honesty and integrity among the service personnel.

From the aforesaid decisions of the Honourable Supreme Court of India, it is no more res integra that in cases where the government may not be in a position to dismiss or remove an employee/officer from service after inquiry for want of sufficient evidence, but with a view to secure efficiency in the public service and to maintain honesty and integrity amongst the service personnel, such officer/employee can be ordered to be retired compulsorily. If an officer/employee is of doubtful integrity or he is corrupt, but sufficient evidence is not available to take disciplinary action against him in accordance with rules, so as to inculcate a sense of discipline in service, he can be ordered to be retired compulsorily in public interest with a view to improve the efficiency of the administration and to weed out the people of doubtful integrity or are corrupt. The only requirement of law is that on the basis of material

which were available, a prudent person could have formed an opinion that integrity of the employee/officer concerned is doubtful and with a view to secure efficiency in public service and to maintain honesty and integrity, he should be ordered to be retired compulsorily.

In the present case as recorded earlier the proceedings of the Review Committee have been produced on the record of this Special Civil Application by the respondents. The Review Committee has found that nothing adverse has been recorded in the C.R. file of the petitioner regarding his integrity. It has also been noticed by the said Committee that the petitioner has been promoted with effect from 16.5.1981 and therefore, C.Rs. of the years 1981-82 and 1982-83 are required to be considered. The C.Rs. of those two years were not available. On reading the aforesaid portion of the report of the Review Committee, what I gather is that it has proceeded on presumption that whatever service record of the petitioner was available was of the period earlier to 16.5.1981 and it stood washed off on his getting promotion on that day. After reaching that conclusion the Review Committee has not bothered to look into the service records of the petitioner for the period earlier to 16.5.1981. In the case of *State of Orissa v. Ramchandra Das* (supra) Their Lordships of the Supreme Court of India have held that adverse service record of an officer on his promotion is not washed off for the purpose of forming an opinion on the point as to whether his continuation in service after a particular age before the age of superannuation, would be in the interest of public. Such material may not be used for denial of promotion to the employee/officer concerned but, it is part of the service record of the officer/employee concerned and such material should be taken into consideration while considering the question of his retention in service after a particular age i.e. for compulsory retirement.

At one point of time, I thought of to send the matter back to the respondent-State to reconsider the case of compulsory retirement of the petitioner. But, from the record I find that the Review Committee found strong grounds of doubtful integrity of the petitioner and the Review Committee has opined that it is not advisable to continue the petitioner in service for further period. However, the Review Committee has further opined that when there are serious charges against the petitioner it felt that there are probabilities that the petitioner may be given major

penalty of dismissal and in case he is retired at the age of 50 years such disciplinary proceedings for major penalty cannot be continued and no punishment can be imposed. The Review Committee also observed that step for reduction of pension also cannot be taken. So, the Review Committee was of the opinion that as the petitioner's integrity is doubtful he should not be allowed to continue in service. As held by the Honourable Supreme Court of India in the aforesaid cases, compulsory retirement is not a punishment and it also does not entail any loss to the Government servant, who is ordered to be retired compulsorily and such government servant will get all the pensionary benefits. So, the opinion of the Review Committee was that the petitioner, whose integrity is doubtful, should be dismissed from service. After forming this opinion the Review Committee has observed that he should be continued in service under suspension so that inquiry can be held against him and appropriate major penalty can be imposed on him.

The Report of the Review Committee was placed for consideration before the Secretary concerned and the Chief Secretary and ultimately, the Chief Secretary has opined that the petitioner should be compulsorily retired. However, the Chief Secretary has opined that in case the petitioner goes to the Court challenging the order of compulsory retirement, case pending against him should not be withdrawn. In other words, if he does not challenge the order of compulsory retirement case against him may be withdrawn.

From the proceedings of the Review Committee as also the discussion of the Secretary concerned and the Chief Secretary, it is clear that the Review Committee has formed an opinion that the petitioner's integrity is doubtful. So far as the law on the point of compulsory retirement is concerned, it is a consensus that in case of employees/officers of doubtful integrity or dishonesty retention of such employee/officer would not be in public interest. Not only this, but to maintain efficiency and honesty in services such officer/employee has to be chopped off from service. It is true, as opined by the Review Committee, that such person should not be allowed to go with all rewards of pension and other retrial benefits and he should be dismissed from service. But in such matters sufficient evidence to punish the employee/officer concerned may not be available. Their Lordships of the Honourable Supreme Court of India have taken note of such matters in the cases of Sukhdeo v. Commissioner of Amravati Division (supra) and State of Orissa v. Ramchandra Das (supra) and held that if no

sufficient evidence is available to dismiss or remove inefficient and corrupt officers, they can be weeded out from service by exercising powers of compulsory retirement. If the authorities concerned feel that sufficient material may not be available to take disciplinary action against such employee/officer in accordance with the rules, the Authorities would certainly be entitled to retire such employee/officer compulsorily so as to inculcate a sense of discipline in service.

I may revert back to the facts of this case and admittedly there were two cases against the petitioner for offence punishable under the provisions of Prevention of Corruption Act. It is true that in one case "A" Summary has been filed and in the other one charge-sheet has been filed and case is pending in the Court. Only question which now requires consideration of this Court is, whether on the basis of this material the Review Committee and the Disciplinary Authority could have formed bona fide opinion, to compulsorily retire the petitioner or not. The contention of the learned counsel for the petitioner is that on the basis of these two criminal cases, the petitioner could not have been ordered to be retired compulsorily. But, in view of the latest decision of the Honourable Supreme Court this contention may not be of much substance and merits. Each case has to be decided on its own facts and certainly the Review Committee and the Disciplinary Authority could have formed an opinion on the basis of the material available whether the integrity of the petitioner is doubtful or not. It is clearly borne out that there were serious complaints against the petitioner regarding issuance of forged permits of cement and two cases under the provisions of the Prevention of Corruption Act were filed against the petitioner. Ratio of the judgments of the Honourable Supreme Court in the cases of Sukhdeo v. Commissioner of Amravati and State of Orissa v. Ramchandra Das (supra) is equally applicable to the cases where sufficient evidence may not come to file chargesheet against officer/employee, but still on the basis of material a prudent person can form an opinion that it is not in the interest of public to retain such person in service. If such decision is taken no exception can be taken to it. The powers of judicial review in such matters are very limited as pointed out by the Honourable Supreme Court of India in catena of decisions. In such matters while exercising powers of judicial review, only question to be considered is as to whether action has been taken against the employee/officer is mala fide or whether there is any

material or not on record to form such an opinion against the employee/officer concerned or whether the decision taken is perverse or arbitrary. So far as mala fides are concerned, it is not the case of the petitioner. Next question is whether there is any material on record in this case on the basis of which an opinion could have been formed that the petitioner is a person of doubtful integrity and it is not in public interest to continue him in service. The opinion of the Review Committee that the petitioner should be chargesheeted and he may be awarded major penalty of dismissal is not material aspect to be considered. The material aspect is that the Review Committee has formed an opinion that the petitioner is a man of doubtful integrity and his retention in service is not in public interest. The material which has come on the record of this case before the Govt. certainly a prudent man could have formed an opinion that retention of the petitioner is not in the public interest.

Taking into consideration the entire facts and circumstances of the case, I do not consider it to be a fit case where interference of this Court is called for. In result, the Special Civil Application fails and same is dismissed. Rule discharged with no order as to costs. Interim relief, if any, granted by this Court is vacated.

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(ksp)